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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,029	09/24/2003	Takayuki Suzuki	17053	4550
23389	7590	07/05/2007		EXAMINER
SCULLY SCOTT MURPHY & PRESSER, PC				NGUYEN, TUAN VAN
400 GARDEN CITY PLAZA				
SUITE 300			ART UNIT	PAPER NUMBER
GARDEN CITY, NY 11530			3731	
			MAIL DATE	DELIVERY MODE
			07/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/670,029	SUZUKI, TAKAYUKI	
Examiner	Art Unit		
Tuan V. Nguyen	3731		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 19 March 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) 2-5,8,9 and 11-15 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,6,7 and 10 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 24 September 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 562705, 1/26/05, 9/24/03

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Election/Restriction Requirements***

1. According to the Response to the Election/Restriction Requirements applicant filed on March 19, 2007, applicant elected Species I of Figures 3A-4D and claims 1, 6, 7, and 10 without traverse. Claims 2-5, 8-9 and 11-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions. .

### ***Specification***

2. The specification is objected to because: page 21, line 14, recites "central axis O1 of the sheath 4" is incorrect. It is understood that applicant intended to recite "central axis O of the sheath 4". Appropriate correction is required.

### ***Claim Objection***

3. Claim 10 is objected to of the following informalities: claim 10 recites limitation "the rocking axis being formed integrally with the flat portion". Axis, by definition, is an imaginary line defined by a three-dimensional object, therefore, the axis can not be formed integrally with another three-dimension object. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. **Claims 1, 6, and 7 are rejected under 35 U.S.C. 102(a) as being anticipated by Suzuki (JP02000279418A).**

6. Referring to claims 1 and 10, Suzuki discloses (see Figs. 2, 3 4) an medical instrument comprising: a swingable operating section 12a, 12b formed of a pair of forceps which rock around a first rocking axis defined by pins 22a, 22b ; a tubular sheath 4 having a distal end portion situated on a proximal end side of the operating section, the distal end portion having a circular-section portion having a circular cross section perpendicular to a longitudinal central axis thereof and a pair of flat portions 15a, 15b formed by cutting the opposite sides of the circular-section portion and in sliding contact with respective proximal end portions of the forceps; a wire or manipulator 9a, 9b which advances and retreats in the longitudinal direction of the sheath, thereby rocking the forceps around the first rocking axis; and a junction which connect the manipulator for rocking motion around a second rocking axis, which defined by pins 23a, with respect to the forceps in the flat portions, the junction being situated on or near a reference plane passing through the longitudinal central axis of the sheath and extending parallel to the second rocking axis when the operating section is closed.

7. Referring to **claims 6 and 7**, Suzuki (see Figs. 5a) pins 22a, 22b, defined the first rocking axis, includes a shank and wherein the shank having a spread portion (juxtapose to the oval tube 9) formed on one of the ends of the pin that having a larger in outer diameter than the shank portion.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. **Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki, as applied to claims 1, 6, and 7 above, in view of Langhoff et al. (U.S. 4,715,809).**

11. Referring to claim 10, Suzuki discloses the invention substantially as claimed (see rejection of claim 1) except for the pins 22a and 22b, which is the rocking axis, formed integrally with flat portion so as not to project into the bore of the distal portion. However, Langhoff et al. discloses a cooling tube 1 with pins 2 disposed on and protruding from the outer surface of the cooling tube 1, wherein the pins is attached to the tube via welding (see col. 3, lines 55-57 and col. 4, lines 35-38). Further, Langhoff et al. (see Fig. 5) discloses the fin and tube 1 can be a unitary component. Therefore, It would have been obvious to one of ordinary skill in the art to use the manufacturing process, as disclosed by Langhoff et al. to make the pins 22a and 22b as an integrall part with the flat portion or the pin 22a, 22b and the component that having flat portion can be a unitary component because it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Nguyen whose telephone number is 571-272-5962. The examiner can normally be reached on M-F: 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan V. Nguyen  
June 22, 2007

*ceepack*  
(JACKIE) TAN-UYEN HO  
PRIMARY EXAMINER  
6/22/07